



Focus on Enforcement

Spill Prevention, Preparedness, and Response Program (Spills)

KEY TERMS

Covered vessel

- Cargo, fishing or passenger vessel 300 gross tons or more, or a tank vessel.

Onshore facility

- Oil-handling facility near Washington navigable waters that transfers oil to or from a tank vessel or pipeline.

Strict liability

- A violation without regard to the fault or intent of the spiller.

RCW - Revised Code of Washington.

WAC - Washington Administrative Code.

See publication: "Aboveground Storage Tanks" Publication #03-08-014

How Does Enforcement Work?

Common questions asked when notified of enforcement taken by the Spills Program are: What are the state laws and rules? How are they enforced? How are penalties determined? What do I do now?

Below are quick answers to those questions and directions to more information.

What are the state laws and rules enforced by the Spills Program?

Laws enforced by the Spills Program fall into four general categories:

Spills of oil or hazardous substances to state waters;

Threats of spills to state waters;

Prevention and response planning; and

Illegal operation of a covered vessel or an onshore facility.

Spills of oil or hazardous substances:

- To state waters (strict liability) - RCW 90.48.080 and 90.56.320
- Liability for negligent, reckless or intentional oil spill – RCW 90.56.330
- Immediate notification is required – RCW 90.56.280
- Duty to contain and cleanup – RCW 90.56.340
- Liability for state expenses – RCW 90.56.360

Threats of spills to state waters:

- A covered vessel that poses a substantial risk of harm to the environment or public health and safety – RCW 88.46.050 and chapter 317-31 WAC; vessel refueling, chapter 317-40 WAC
- Liability for state expenses – RCW 90.56.360

Prevention and response planning requirements:

- There are two planning requirements under state law: Response planning and prevention planning. An oil spill response plan is required for both covered vessels and onshore facilities. Onshore facilities are also subject to prevention planning requirements and compliance with operating and design standards.

Planning violations are:

- Operating without an approved plan – RCW 88.46.080 and 90.56.310
- Failure to meet planning standards – RCW 88.46.060 and chapter 317-10 WAC; RCW 90.56.210 and chapter 173-181
- Failure to comply with an approved plan – RCW 90.56.270, chapter 317-10 WAC, and chapter 173-181 WAC

Illegal operation of a covered vessel or an onshore facility:

- Operation of a covered vessel or onshore facility without required plans or financial responsibility – RCW 88.46.080 and 90.56.310
- Transfer of oil by a covered vessel to or from an onshore facility that does not have required contingency or prevention plans, or financial responsibility – RCW 88.46.090
- Transfer of cargo or passengers by an onshore facility to or from a covered vessel that does not have required contingency or prevention plans, or financial responsibility – RCW 90.56.310

Financial Responsibility -

Covered vessels, and barges carrying hazardous substances are required to be insured for pollution clean-up and damages to specific amounts. As of July 27, 2003, cargo and passenger vessels must have at least \$300 million worth of coverage. As of January 1, 2004, tank vessels must have at least \$1 billion worth of coverage.

- Failure of an onshore facility to meet established equipment and design standards – RCW 90.56.220 and chapter 173-180A WAC
- Operating a vessel while under the influence of intoxicating drugs or alcohol – RCW 90.56.540
- Reckless operation of a tank vessel – RCW 90.56.530

How are these laws and rules enforced?

Violations are determined either by inspection or incident investigation. If the evidence gathered indicates a violation has occurred, or a violation is likely to occur, the Spills Program is authorized by statute to enforce compliance. Statutory authority for enforcement depends on the violation.

- For violations of chapter 88.40 and 88.46 RCW and associated rules, enforcement authority is provided by RCW 88.46.070 through 88.46.090.
- For violations of chapters 90.48 and 90.56 RCW and associated rules, enforcement authority is provided by RCW 90.48.120, 90.48.140, and 90.48.144.

Other statutes that grant enforcement authority in specific circumstances are:

- Enforcement of onshore facility response and prevention plans – RCW 90.56.270
- Penalty authority for a negligent, reckless or intentional oil spill – RCW 90.56.330
- Authority to order reimbursement of state expenses – RCW 90.56.400

Some statutes provide for both administrative and criminal enforcement. If a crime is suspected, the case is referred to criminal investigators and prosecutors. Enforcement taken by the Spills Program involves only the administrative authority granted by the authorizing statutes.

Enforcement is used to obtain compliance. There are a range of enforcement actions with impacts that run from simple notice of a potential violation to the requirement to pay money. Enforcement is tailored to the severity of the violation, compliance history of the violator, impact on the environment, and other relevant factors (for example, effectiveness of a response to a spill).

The following is a summary of the enforcement actions used by the Spills Program:

- **Compliance letter** – Much of the enforcement work is conducted through correspondence indicating areas of concern or requesting additional information.
- **Notice of Violation** – A formal notice of violation or potential violation that requests a written report within 30 days of receipt stating how compliance will be achieved. (See RCW 88.46.070 and 90.48.120.)
- **Notice of Correction** – A formal notice of violation that describes what must be done to be in compliance within a reasonable amount time. This is issued in lieu of a penalty for violations with minor environmental or public impact. (See chapter 43.05 RCW.)
- **Administrative Order** – A determination of a violation that requires something to be done, or to cease being done, to be in compliance. (See RCW 88.46.070 and 90.48.120.)
- **Notice of Penalty** – A determination of a violation that requires money to be paid as a penalty. (See RCW 90.48.144 and 90.56.330.)

A **Notice of Correction** and a **Notice of Penalty** (called citations) may be issued in the field for minor violations. **Administrative Orders** may also be issued in the field if immediate action is necessary to prevent further violations or a spill.

If not issued in the field, an **Administrative Order** and/or a **Notice of Penalty** are based on a written recommendation for enforcement. Once drafted the recommendation is circulated

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for internal review before the enforcement action is signed and issued. Before issuing the order or penalty, the recipient is notified by phone if available.

How are penalties determined?

Statutory authority to issue penalties establishes a monetary range per violation.

Penalty ranges include:

- Up to \$10,000 per violation – RCW 88.46.090(6) and RCW 90.48.144
- Up to \$20,000 for a negligent oil spill for each day oil poses a risk to the environment – RCW 90.56.330
- Up to \$100,000 for a reckless or intentional oil spill for each day oil poses a risk to the environment – RCW 90.56.330
- Up to \$100,000 per day of operation for illegal operation of a covered vessel or onshore facility – RCW 88.46.090 and 90.56.310

Once the investigation is complete, a written recommendation for enforcement is drafted that reviews the facts determined by the investigation, the violations based on the facts, and the factors used to determine where in a particular range a penalty should fall.

Factors evaluated include:

- Environmental impact – Was there actual damage and what was the environmental sensitivity of the area impacted?
- Public health impact – Were members of the public injured or threatened?
- Compliance history of the violator – Have there been prior or similar violations in the past? Are there outstanding enforcement actions?
- Volume – How much was spilled?
- Mitigation factors – Were there actions taken by the violator or other exigent circumstances that should be to the violator's credit?
- Other factors – For example, an identifiable economic benefit to the violator?

I've received an enforcement action. What do I do now?

First, read the document carefully. Formal actions have specific deadlines for responding. Failure to meet the deadline reduces the opportunity to contest the enforcement action or negotiate a settlement.

Second, explore the options.

- A **Notice of Penalty** may be contested by submitting an **Application for Relief** which must be in writing and submitted within 15 days of receiving the order or penalty; and/or
- An **Administrative Order** and a **Notice of Penalty** may be contested by filing an appeal with the Pollution Control Hearings Board either within 30 days of receiving the **Administrative Order** or **Notice of Penalty** or within 30 days of receiving the formal reply to the **Application for Relief** called a **Notice of Determination**.

Third, keep in contact. Although enforcement is not a pleasant experience, this is an opportunity to learn from mistakes and make the necessary changes to operate within the law.

For more information see RCW 43.21B.300 through RCW 43.21B.320.

Enforcement Information via the Web

Text of the laws and rules are available on-line at: <http://www.ecy.wa.gov/laws-rules/index.html>.

For information on other costs assessed under state law see Ecology's "Am I Liable for Other State Costs?" Publication #03-08-004.

Natural Resource Damage Assessments are NOT penalties but compensation for damages to state natural resources.

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